

RICHARD A. MARSHACK  
rmarshack@marshackhays.com  
MARSHACK HAYS WOOD LLP  
870 Roosevelt Avenue  
Irvine, CA 92620  
Telephone: (949) 333-7777  
Facsimile: (949) 333-7778

Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

In re

KRISTINA LYNN SMITH,

Debtor.

Case No. 8:24-bk-12527-TA

Chapter 7

CHAPTER 7 TRUSTEE'S APPLICATION TO  
EMPLOY REAL ESTATE AGENT;  
DECLARATION OF CLARENCE YOSHIKANE  
IN SUPPORT

**[11 U.S.C. §§ 327(a) and 328(a);  
FRBP 2014; and LBR 2014-1(b)]**

[No Hearing Required Unless  
Requested – LBR 9013-1(o)(1)]

TO THE HONORABLE THEODOR C. ALBERT, UNITED STATES BANKRUPTCY  
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL OTHER  
INTERESTED PARTIES:

Richard A. Marshack, Chapter 7 Trustee ("Trustee" or "Applicant") for the bankruptcy  
estate (the "Estate") of Kristina Lynn Smith ("Debtor"), brings this application for authorization  
to employ Clarence Yoshikane of BHHS / Berkshire Hathaway HomeServices CA Properties as  
the Trustee's real estate agent ("Agent") in this bankruptcy case (the "Application").

In support thereof, Trustee respectfully represents as follows:

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## Background Information

On October 3, 2024, Debtor filed a voluntary petition under Chapter 7 of Title 11 the United States Code. On the same date, Richard A. Marshack ("Trustee") was appointed as the Chapter 7 trustee.

On October 17, 2024, as Dk. No. 9, Debtor filed the schedules and statements.

On October 28, 2024, as Dk. No. 13, the Trustee filed a notice of assets.

On November 5, 2024, as Dk. No. 15, Debtor filed amended schedules A/B and C.

## The Property

In her Schedule A/B, Debtor lists an ownership interest in real property located at and commonly known as 27591 Kathy Ct., Laguna Niguel, CA 92677 ("Property") which Debtor values at \$1,924,800. The Property is a single-family home in Orange County, California. Title to the Property is held in joint tenancy of the Debtor and Jeff Gomez.

Debtor's Amended Schedule C reflects an exemption in the amount of \$699,421 and Schedule D reflects liens totaling \$897,508.

Agent has viewed the Property and, based on the comparable sales in the area, the current market value of the Property is \$1,800,000 to \$2,000,000.

## Services To Be Performed

In order to market the Property most effectively, and thereby to liquidate the same for the best and highest price, Trustee has solicited the assistance of Agent, a licensed real estate agent. Agent, on behalf of Trustee, has examined the information related to the Property and has agreed to advertise the Property at the Agent's expense, to show the Property to interested parties, to represent the Estate as seller in connection with the sale of the Property, and to advise Trustee with respect to obtaining the highest and best offers available in the present market. Based on the foregoing agreement, Trustee desires to enter into listing agreement and addendum (the "Listing Agreement"), in substantially the form as attached hereto as **Exhibit "1,"** to employ Clarence Yoshikane of Berkshire Hathaway HomeServices CA Properties as the Estate's real estate agent to procure and submit to Trustee offers to purchase the Property.

## **Compensation Procedure**

In consideration for such services, subject to further application and Court order, the Agent will receive, upon consummation of a sale, a real estate agent's commission in an amount equal to six percent (6%) of the purchase price, subject to a carve-out to the Estate of two percent (2% ) of the total commission.

Agent has been informed and understands that no sale of the Property may be consummated until after a notice to creditors with the opportunity for a hearing as well as a Court order.

Pursuant to the Listing Agreement, the commission will only be paid to the Agent from the proceeds of the sale of the Property and after Court approval. The Trustee requests that he be authorized to pay such commission as an administrative expense through escrow at the closing of the sale of the Property from the proceeds of that Property without the Broker being required to file a fee application.

Agent is aware of the provisions of Bankruptcy Code Section 328(a) and has agreed, notwithstanding the terms and conditions of employment herein set forth, that the Court may allow compensation different from the compensation provided herein if such terms and conditions proved to have been improvident in light of developments unanticipated at the time of the fixing of such terms and conditions.

The Agent has not received any retainer or other compensation for its retention by the Trustee and will only receive compensation as authorized by this Court pursuant to this Application to be paid from the proceeds of the sale of the Property.

## **The Agent is Disinterested**

To the best of Applicant's knowledge, and based upon the Declaration of Clarence Yoshikane filed concurrently herewith, neither the Agent, nor any persons employed by BHHS / Berkshire Hathaway HomeServices CA Properties, have any connection with the Debtor, creditors, or any other party in interest, their respective attorneys and accountants, Judge of the Bankruptcy Court, the United States Trustee, and any person employed by the Office of the

United States Trustee, hold or represent any interest adverse to that of Debtor or the Debtor's estate and that Agent is a disinterested person within the meaning of 11 U.S.C. Section 101(14).

Trustee believes that employment of the Agent will be in the best interest of the bankruptcy Estate.

### **Conclusion**

WHEREFORE, Trustee requests that he be authorized to employ Clarence Yoshikane of Berkshire Hathaway HomeServices CA Properties as the Estate's real estate agent on the terms and conditions set forth herein, that Trustee be empowered to execute the Listing Agreement, and for such other and further relief as is just.

Dated: April 11, 2025

Respectfully submitted,

/s/ Richard A. Marshack  
Richard A. Marshack, Chapter 7 Trustee for the  
Bankruptcy Estate of Kristina Lynn Smith

**Declaration of Clarence Yoshikane**

I, CLARENCE YOSHIKANE, declare and state as follows:

1. I am a licensed real estate agent and employed with Berkshire Hathaway HomeServices CA Properties (“Broker” or “Firm”), 1400 Newport Center Drive, Suite 200, Newport Beach, California 92660; telephone (714) 606-5765.

2. I am familiar with the foregoing Application to Employ Real Estate Agent (the “Application”) and the real property located at and commonly known as 27591 Kathy Ct., Laguna Niguel, CA 92677 (“Property”) and believe that I am qualified to represent the Trustee and the Estate in connection with the marketing of the Property. I am very familiar with the market for its sale.

3. The Firm has extensive experience in residential and commercial real estate transactions.

4. The Firm has performed services for other Chapter 7 trustees in the Central District of California and the Firm is familiar with the rules and processes employed in the bankruptcy courts for the Central District of California.

5. I have agreed to accept employment on the terms and conditions set forth in the Application and Listing Agreement for the sale of the Property. A true and correct copy of the Property Listing Agreement is attached hereto as Exhibit “1.”

6. In my experience, 8% is a reasonable projection of the costs of sale, taking into account an 6% sales commission and 2% escrow, title and incidental costs.

7. I have agreed and understand, notwithstanding the terms and conditions of employment set forth herein, that the Court may allow compensation different if such terms and conditions prove to have been improvident in light of developments unanticipated at the time of fixing such terms and conditions.

8. The Firm is a “disinterested person” within the meaning of Bankruptcy Code Section 101(14). The Firm does not have an interest adverse to the Debtor or the Estate. As of the Petition Date, the Firm was not a creditor of the Estate and was not owed any funds by the Debtor.

1 9. The Firm has no pre-petition claim against Debtor's Estate.

2 10. To the best of my knowledge, the Firm has no connections with the Debtor,  
3 creditors, any other party in interest, their respective attorneys and accountants, the United States  
4 trustee, or any person employed in the office of the United States Trustee.

5 11. To the best of my knowledge, the Firm has no relation to any judge of the United  
6 States Bankruptcy Court for the Central District of California, the United States Trustee, or any  
7 person currently employed in the Office of the United States Trustee.

8 12. The Firm has not received a retainer for the services to be performed herein.

9 13. The Firm understands that its compensation in this case is subject to approval of  
10 this Court pursuant to 11 U.S.C. § 328.

11 14. To the best of my knowledge, I represent no interest which would be adverse to  
12 this Estate or its creditors or any party in interest in this proceeding and I am a "disinterested  
13 person" as the term is defined in Bankruptcy Code Section 101(14).

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15 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
16 March April 11, 2025.

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CLARENCE YOSHIKANE

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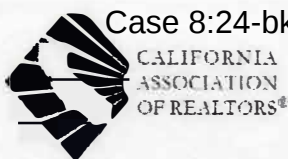
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**EXHIBIT 1**

**DISCLOSURE REGARDING  
REAL ESTATE AGENCY RELATIONSHIP**(As required by the Civil Code)  
(C.A.R. Form AD, Revised 12/21)

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

**SELLER'S AGENT**

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

**BUYER'S AGENT**

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

**AGENT REPRESENTING BOTH SELLER AND BUYER**

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

**SELLER AND BUYER RESPONSIBILITIES**

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

APN: 636-632-34

Case No. 8:24-bk-12527-TA

☐ Buyer ☒ Seller ☐ Landlord ☐ Tenant

Date 3-30-25

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant

Date \_\_\_\_\_

Agent Berkshire Hathaway HomeServices CA PropertiesDRE Lic. # 01317331By Richard A. Marshack, Ch 7 Trustee for the Estate of: Kristina Lynn Smith

Real Estate Broker (Firm)

Carence Y Shikane

DRE Lic. # 00801398Date January 28, 2025

(Salesperson or Broker-Associate, if any)

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AD REVISED 12/21 (PAGE 1 OF 2)

**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)**BHHS California Properties - Newport Beach, 1400 Newport Center Dr Ste 200 Newport Beach CA 92660  
Jennifer Toyama

Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Phone: (555)555-5555

Fax: 9496407429

www.lwolf.com

BK / Listing

EXHIBIT 1





2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is the broker of (check one): <input type="checkbox"/> the seller; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Seller's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is (check one): <input type="checkbox"/> the Seller's Agent. (salesperson or broker associate) <input type="checkbox"/> both the Buyer's and Seller's Agent. (dual agent)		
Buyer's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is the broker of (check one): <input type="checkbox"/> the buyer; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Buyer's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is (check one): <input type="checkbox"/> the Buyer's Agent. (salesperson or broker associate) <input type="checkbox"/> both the Buyer's and Seller's Agent. (dual agent)		

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. (b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. (d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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*Signature*



AD REVISED 12/21 (PAGE 2 OF 2)

## DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)





# POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/21)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

**Multiple Buyers:** Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

**Multiple Sellers:** Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

**Dual Agency:** If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.

**Offers not necessarily confidential:** Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

**Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.**

Seller Richard A. Marshack Richard A. Marshack, Ch 7 Trustee for the Estate of: Kristina Lynn Smith Date 3-31-25  
 Seller \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer's Brokerage Firm \_\_\_\_\_ DRE Lic # \_\_\_\_\_ Date \_\_\_\_\_  
 By \_\_\_\_\_ DRE Lic # \_\_\_\_\_ Date \_\_\_\_\_  
 Seller's Brokerage Firm Berkshire-Hathaway HomeServices CA Properties DRE Lic # 01317331 Date January 28, 2025  
 By Clarence Yoshikane DRE Lic # 00801398 Date \_\_\_\_\_

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PRBS REVISED 12/21 (PAGE 1 OF 1)

## POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)

BHHS California Properties - Newport Beach, 1400 Newport Center Dr Ste 200 Newport Beach CA 92660  
Jennifer Toyama

Phone: (555)555-5555  
Produced with Lone Wolf Transactions (zipForm Edition) 717 N Harwood St, Suite 2200, Dallas, TX 75201

Fax: 9496407429  
www.lwolf.com

BK / Listing

EXHIBIT 1

Page 9





Date Prepared: January 28, 2025

1. **EXCLUSIVE RIGHT TO SELL:** Richard A. Marshack, Ch 7 Trustee for the Estate of: Kristina Lynn Smith ("Seller")  
hereby employs and grants Berkshire Hathaway HomeServices CA Properties ("Broker")  
beginning (date) January 28, 2025 and ending at 11:59 P.M. on (date) July 28, 2025 ("Listing Period")  
the exclusive and irrevocable right to sell or exchange the real property described as 27591 Kathy Court

Orange, situated in Laguna Niguel, (City),  
Orange (County), California, 92677, (Zip Code), Assessor's Parcel No. 636-632-34 ("Property").

☐ This Property is a manufactured (mobile) home. See Manufactured Home Listing Addendum (C.A.R. form MHLA) for additional terms.

☐ This Property is being sold as part of a probate, conservatorship, guardianship, or receivership. See for Probate Listing Addendum and Advisory (C.A.R. form PLA) for additional terms.

2. **LISTING PRICE AND TERMS:** APN: 636-632-34 Case No. 8:24-bk-12527-TA

A. The listing price shall be: One Million Nine Hundred Ninety Nine Thousand Nine Hundred and Ninety Nine  
Dollars (\$ 1,999,999 ).

B. Listing Terms: Two Percent Carve-out to the Bankruptcy Estate from Total Commission.

3. **COMPENSATION TO BROKER:**

**Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).**

A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either ☒ 6.00 percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or ☐ \$ \_\_\_\_\_, as follows:

(1) If during the Listing Period, or any extension, Broker, cooperating broker, Seller or any other person procures a ready, willing, and able buyer(s) whose offer to purchase the Property on any price and terms is accepted by Seller, provided the Buyer completes the transaction or is prevented from doing so by Seller. (Broker is entitled to compensation whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension.)

~~OR (2) If within \_\_\_\_\_ calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker, or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under paragraph 3A(2) unless, not later than the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.~~

~~OR (3) If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.~~

~~B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation which otherwise would have been earned under paragraph 3A shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.~~

C. In addition, Seller agrees to pay Broker:

D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.

(1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in 3A, either ☒ 2.00 percent of the purchase price, or ☐ \$ \_\_\_\_\_.

(2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker's policy.

DI. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow. Broker may submit this Agreement, as instructions to compensate Broker pursuant to paragraph 3A, to any escrow regarding the Property involving Seller and a buyer, Prospective Buyer or other transferee.

DII. (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property, unless specified as follows: \_\_\_\_\_

(2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities: \_\_\_\_\_

(3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Seller in such transaction.





Date: January 28, 2025**ADDITIONAL ITEMS INCLUDED:**

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Property Address: ....

27591 Kathy Ct Laguna Niguel, CA 92677-6025

**11. DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.**12. AGENCY RELATIONSHIPS:**

- A. Disclosure:** The Seller acknowledges receipt of a ☒ "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. Seller Representation:** Broker shall represent Seller in any resulting transaction, except as specified in paragraph 3F.
- C. POSSIBLE DUAL AGENCY WITH BUYER:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate-licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands and agrees that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.
- D. CONFIRMATION:** Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Seller's execution of a purchase agreement.
- E. POTENTIALLY COMPETING SELLERS AND BUYERS:** Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement. Seller acknowledges receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

**13. SECURITY, INSURANCE, SHOWINGS, AUDIO AND VIDEO:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a key safe/lockbox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller. Persons visiting the Property may not be aware that they could be recorded by audio or visual devices installed by Seller (such as "nanny cams" and hidden security cameras). Seller is advised to post notice disclosing the existence of security devices.

**14. PHOTOGRAPHS AND INTERNET ADVERTISING:**

- A.** In order to effectively market the Property for sale it is often necessary to provide photographs, virtual tours and other media to buyers. Seller agrees (or ☐ if checked, does not agree) that Broker or others may photograph or otherwise electronically capture images of the exterior and interior of the Property ("Images") for static and/or virtual tours of the Property by buyers and others for use on Broker's website, the MLS, and other marketing materials and sites. Seller acknowledges that if Broker engages third parties to capture and/or reproduce and display Images, the agreement between Broker and those third parties may provide such third parties with certain rights to those Images. The rights to the Images may impact Broker's control or lack of control of future use of the Images. If Seller is concerned, Seller should request that Broker provide any third parties' agreement impacting the Images. Seller also acknowledges that once Images are placed on the Internet neither Broker nor Seller has control over who can view such Images and what use viewers may make of the Images, or how long such Images may remain available on the Internet. Seller further assigns any rights in all Images to the Broker/Agent and agrees that such Images are the property of Broker/Agent and that Broker/Agent may use such Images for advertising, including post sale and for Broker/Agent's business in the future.
- B.** Seller acknowledges that prospective buyers and/or other persons coming onto the property may take photographs, videos or other images of the property. Seller understands that Broker does not have the ability to control or block the taking and use of Images by any such persons. (If checked) ☐ Seller instructs Broker to publish in the MLS that taking of Images is limited to those persons preparing Appraisal or Inspection reports. Seller acknowledges that unauthorized persons may take images who do not have access to or have not read any limiting instruction in the MLS or who take images regardless of any limiting instruction in the MLS. Once Images are taken and/or put into electronic display on the Internet or otherwise, neither Broker nor Seller has control over who views such Images nor what use viewers may make of the Images.

**15. KEYSAFE/LOCKBOX:** A key safe/lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, authorized inspectors, and accompanied prospective buyers. Seller further agrees that Broker, at Broker's discretion, and without further approval from Seller, shall have the right to grant access to and convey Seller's consent to access the Property to inspectors, appraisers, workers, repair persons, and other persons requiring entry to the Property in order to facilitate the sale of the Property. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are not insurers against injury, theft, loss, vandalism or damage attributed to the use of a key safe/lockbox.

**A.** Seller does (or if checked ☐ does not) authorize Broker to install a key safe/lockbox.

**B. TENANT-OCCUPIED PROPERTY:** If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a key safe/lockbox (C.A.R. Form KLA).

**16. SIGN:** Seller does (or if checked ☐ does not) authorize Broker to install a FOR SALE/SOLD sign on the Property.

**17. EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.

**18. ATTORNEY FEES:** In any action, proceeding or arbitration between Seller and Broker to enforce the compensation provisions of this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Seller or Broker, except as provided in paragraph 22A.

**19. ADDITIONAL TERMS:** ☐ REO Advisory Listing (C.A.R. Form REOL) ☐ Short Sale Information and Advisory (C.A.R. Form SSIA)

☐ Trust Advisory (C.A.R. Form TA)

☐ Seller intends to include a contingency to purchase a replacement property as part of any resulting transaction

PROPERTY TO BE SOLD IN "AS-IS", "WHERE-IS" CONDITION WITH ALL FAULTS AND WITHOUT ANY WARRANTIES, EXPRESSED OR IMPLIED. PEST CONTROL/TERMITE INSPECTION REPORT AND ANY CORRECTIVE WORK WILL NOT BE PROVIDED, COMPLETED BY NOR PAID FOR BY SELLER.

TRUSTEE'S ADDENDUM TO EXCLUSIVE AND RIGHT TO SELL IS INCORPORATED HEREIN IN ITS ENTIRETY.

RLA REVISED 6/21 (PAGE 4 OF 5)

Seller's Initials

**RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 4 OF 5)**

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BK / Listing





Property Address: \_\_\_\_\_

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**20. MANAGEMENT APPROVAL:** If an associate-licensee in Broker's office (salesperson or broker-associate) enters into this Agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager has the right to cancel this Agreement, in writing, within **5 Days** After its execution.

**21. SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Seller and Seller's successors and assigns.

**22. DISPUTE RESOLUTION:**

**A. MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them regarding the obligation to pay compensation under this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. Exclusions from this mediation agreement are specified in paragraph 22B.

**B. ADDITIONAL MEDIATION TERMS:** The following matters shall be excluded from mediation: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation provisions.

**C. ARBITRATION ADVISORY:** If Seller and Broker desire to resolve disputes arising between them through arbitration rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB).

**23. ENTIRE AGREEMENT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts.

**24. OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that: (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to both execute this Agreement and sell the Property. Exceptions to ownership, title and authority are as follows: \_\_\_\_\_

☐ **REPRESENTATIVE CAPACITY:** This Listing Agreement is being signed for Seller by an individual acting in a Representative Capacity as specified in the attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. Seller (i) represents that the entity for which the individual is signing already exists and (ii) shall Deliver to Broker, within 3 Days After Execution of this Agreement, evidence of authority to act (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, resolution, or formation documents of the business entity).

By signing below, Seller acknowledges that Seller has read, understands, received a copy of and agrees to the terms of this Agreement.

APN: 636-632-34

Case No. 8:24-bk-12527-TA

Seller

Date

3-30-25

Richard A. Marshack, Ch 7 Trustee for the Estate of: Kristina Lynn Smith

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

☐ Additional Signature Addendum attached (C.A.R. Form ASA)

Real Estate Broker (Firm) Berkshire Hathaway HomeServices CA Properties DRE Lic. # 01317331  
Address 1400 Newport Center Drive, Suite 200 City Newport Beach State CA Zip 92660

By Clarence Yoshikane Tel. 714.606.5765 E-mail Clarence.Yoshikane@gmail.com DRE Lic.# 00801398 Date January 28, 2025

By \_\_\_\_\_ Tel. \_\_\_\_\_ E-mail \_\_\_\_\_ DRE Lic.# \_\_\_\_\_ Date \_\_\_\_\_

☐ Two Brokers with different companies are co-listing the Property. Co-listing Broker information is on the attached Additional Broker Acknowledgement (C.A.R. Form ABA).

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RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 5 OF 5)

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BK / Listing

EXHIBIT 1

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**ADDENDUM TO  
EXCLUSIVE AUTHORIZATION AND RIGHT TO SELL**

This Addendum to Exclusive Authorization and Right to Sell Agreement ("Agreement") is entered into by and between **Clarence Yoshikane and Berkshire Hathaway HomeServices California Properties** (hereinafter "Agent") and **Richard A. Marshack, as Chapter 7 Trustee for the Estate of: Kristina Lynn Smith 8:24-bk-12527-TA**, pursuant to the following terms and conditions:

**RECITALS**

WHEREAS: **Kristina Lynn Smith** ("Debtor") filed a Voluntary Petition under Chapter 7 of Title 11 on **December 3, 2024**, initiating **Case No. 8:24-bk-12527-TA**, in the United States Bankruptcy Court, Central District of California.

WHEREAS: As a result of the conversion, **Richard A. Marshack** was appointed as Chapter 7 Trustee and is now the representative of the Estate charged with the disposition of property of the Estate.

In reference to the residential real property (the "Property") located at **27591 Kathy Ct, Laguna Niguel, CA 92677-6025** (APN: 636-632-34):

The undersigned hereby agree to this addendum as follows:

1. The parties acknowledge that this listing agreement and any agreement relating to the Property is not binding (including the entering into of a purchase agreement) until Bankruptcy Court approval. The parties acknowledge that the Bankruptcy Court may after approval of this agreement later reduce commissions agreed to.
2. Agent agrees to extensively market the Property through internet real estate websites and multiple listing services.
3. The Trustee shall have the right to sell the Property to anyone who, prior to the date of entering into this agreement, has expressed an interest in purchasing the Property, and Agent shall not be entitled to a commission on such a sale.
4. The Trustee shall further have the right at any time to sell the estate's interest in the Property to the Debtor, **Kristina Lynn Smith**.
5. A commission is not earned until court approval of a purchase agreement is obtained and escrow is closed.
6. All disputes between Agent and Trustee or regarding sale of the Property shall be resolved in the U.S. Bankruptcy Court, Central District of California, Santa Ana Division.





7. There shall be no claim by Agent for damages of any kind against **Richard A. Marshack**, or against the **Law Offices of MARSHACK HAYS WOOD LLP**. Any claim for damages by Agent as it relates to the listing or sale herein shall only be against the Bankruptcy Estate of **Kristina Lynn Smith**.
8. Agent agrees that any previous listing agreements with regard to this Property is Null & Void.
9. This listing is subject to is subject to entering into an agreement with Mr. Carr and approval of the Bankruptcy Court of that agreement.

The within agreement, upon its execution of both parties, is herewith made an integral part of the employment of Agent relating to the Properties herein and the aforementioned Agreement of Sale.

DATED:

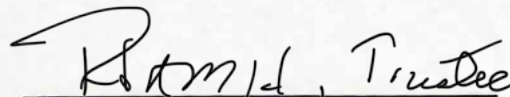
1/28/25

AGENT:

  
Clarence Yoshikane, Trustee's Agent  
clarence.yoshikane@gmail.com

DATED:

BANKRUPTCY TRUSTEE:



Richard A. Marshack, Chapter 7 Trustee for the  
Bankruptcy Estate of **Kristina Lynn Smith** and not in his  
individual capacity or as a member of the Law Offices of  
**MARSHACK HAYS WOOD LLP**

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
870 Roosevelt Avenue, Irvine, CA 92620

A true and correct copy of the foregoing document entitled (*specify*): **TRUSTEE'S APPLICATION TO EMPLOY REAL ESTATE AGENT; DECLARATION OF CLARENCE YOSHIKANE IN SUPPORT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **April 11, 2025**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**: On **April 11, 2025**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**DEBTOR**

KRISTINA LYNN SMITH  
27591 KATHY CT  
LAGUNA NIGUEL, CA 92677-6025

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on   , I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 11, 2025      Pamela Kraus  
Date                      Printed Name

/s/ Pamela Kraus  
Signature

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** continued:

- **David Coats** dacoats@raslg.com
- **Benjamin Heston** bhestonecf@gmail.com, benheston@recap.email, NexusBankruptcy@jubileebk.net
- **Richard G. Heston** rheston@hestonlaw.com, yflores@hestonlaw.com, docs@hestonlaw.com, HestonRR41032@notify.bestcase.com, hestonlaw@recap.email
- **Richard A Marshack (TR)** pkraus@marshackhays.com, ecf.alert+Marshack@titlexi.com
- **Matthew J Stockl** matthew.stockl@dinsmore.com, katrice.ortiz@dinsmore.com
- **United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov
- **Julie J Villalobos** julie@oaktreelaw.com, oakecfmail@gmail.com; villalobosjr51108@notify.bestcase.com; gus@oaktreelaw.com
- **Jennifer C Wong** bknotice@mccarthyholthus.com, jwong@ecf.courtdrive.com